



## ***CLOSED CASE SUMMARY***

ISSUED DATE: FEBRUARY 1, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0493

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)
# 2	12.040 POL-3 - Using Department Devices 2. Employees Use Devices in a Professional Manner	Not Sustained (Training Referral)
# 3	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	Not Sustained (Inconclusive)

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained
# 2	12.040 POL-3 - Using Department Devices 2. Employees Use Devices in a Professional Manner	Not Sustained (Training Referral)

#### **Imposed Discipline**

Written Reprimand

#### **Named Employee #3**

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)
# 2	12.040 POL-3 - Using Department Devices 2. Employees Use Devices in a Professional Manner	Not Sustained (Training Referral)

#### **Named Employee #4**

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)
# 2	12.040 POL-3 - Using Department Devices 2. Employees Use Devices in a Professional Manner	Not Sustained (Training Referral)

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***



---

**EXECUTIVE SUMMARY:**

The Complainant alleged that the Named Employees made unprofessional statements on a public SPD radio channel. OPA also alleged that Named Employee #1 may have failed to report misconduct.

**SUMMARY OF INVESTIGATION:**

Officers, including the Named Employees, were communicating on the TAC-2 radio channel, which can be heard by the public. A community member – the Complainant in this case – heard comments that he believed were unprofessional. The Complainant notified OPA and this investigation ensued.

As part of its investigation, OPA listened to the radio traffic in question. It reflected that, at approximately 5:22 p.m., Named Employee #1 (NE#2) went over the radio and stated: “I have a very angry bicyclist with a brown cap, black backpack, black t-shirt, shorts heading your way East bound.” Named Employee #3 (NE#3) responded: “Should we arrest him?” NE#2 stated: “Well, if a bus happens to be going full speed and he gets in front of it, don’t try to stop the bus.” NE#3 replied: “Here he comes.” Named Employee #1 (NE#1) chimed in and said: “He’s probably going downtown.” NE#3 remarked: “Oh, for sure. He definitely looks like a downtowner.” Named Employee #4 (NE#4) then went over the radio and stated: “Well now to shop in Seattle, you don’t need a charge card, you just need a rock.” NE#3 then said that he was excited to see NE#4 “in action this weekend.”

OPA interviewed all four of the Named Employees concerning their statements. In addition to the specific information they provided, all of the Named Employees said that, after their radio communications were posted on Twitter, they met as a unit and their supervisor counseled them on the expectation that such communications would remain professional.

NE#1, who was assigned as an Acting Sergeant at the time, said that she was involved in the radio communications. However, she claimed to not hear NE#2’s statement about the bus. She stated that she understood NE#2 to be frustrated with the conduct of the bicyclist. She told OPA that she did not assume that the bicyclist was a protester and said that he was probably going downtown because of his direction at the time. She ultimately did not feel that the radio transmissions were unprofessional.

NE#2 said that he was working a detail on the West Seattle Bridge when a bicyclist rode by him without stop. NE#2 recalled that the bicyclist said “fuck you, pig” as he rode past. He stated that he went over the radio to inform the other officers that the bicyclist was approaching them. He felt this was important as he did not know what the bicyclist’s intent was and whether he might try to harm officers. NE#2 explained that he used the terminology he did to express that the bicyclist was angry and had used profanity towards officers without actually using profanity himself. He did not actually want the bicyclist to be hit by bus. He did not believe that his statements violated the professionalism policy and said that it was an attempt at humor during a time that he and other officers were very frustrated.

NE#3 told OPA that he did not hear NE#2’s comment about the bus hitting the bicyclist. He indicated that he asked whether the bicyclist needed to be arrested because he heard the description provided by NE#2. He stated that, as a general matter, when a description was provided over the radio it meant that some police action needed to be taken. He denied that he was being facetious when he made the statement concerning the arrest. With regard to



the comment about the bicyclist looking like a “downtowner,” NE#3 explained that, in his opinion, this just meant someone who lived in in Seattle (or, for that matter, any city). He said that he lived in Seattle for a period of time and also referred to himself as a “downtowner.” NE#3 told OPA that this was not meant to be pejorative. Lastly, with regard to the statement about watching NE#4 in action over the weekend, he was not referring to any specific special operation or demonstration-related activity.

NE#4 heard the comment about the bus and felt that NE#2 was trying to make a joke. With regard to his comment about looting downtown, he explained that he was frustrated that looting had occurred and that officers had been told to stand down because it was not a life safety issue. He did not agree with this decision and it bothered him. Lastly, with regard to NE#3’s statement about watching him in action, NE#4 opined that NE#3 was talking about him writing tickets over the weekend. NE#4 confirmed that he was not involved in any specific special operation or planned demonstration management activities at that time.

### **ANALYSIS AND CONCLUSIONS:**

#### **Named Employee #1 - Allegation #1**

##### ***5.001 - Standards and Duties 10. Employees Shall Strive to be Professional***

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-10.)

NE#1, NE#3, and NE#4 all made comments on the radio; however, none rose to the same level of unprofessionalism as the statement made by NE#2.

Perhaps most problematic of the three was NE#3, who referenced the arrest of the bicyclist, the bicyclist looking like a “downtowner,” and the fun NE#4 was going to have while working over the weekend. However, he provided plausible explanations for the first two statements, and OPA could not ultimately discern any negative significance to the third.

NE#4’s comment concerning looting downtown, while perhaps understanding based on his articulated frustration, was not appropriate to be transmitted over a public radio channel.

NE#1’s comments were the least concerning but her lack of understanding as to why the officers’ collective comments could be deemed unprofessional is troubling to OPA, particularly given her role as a supervisor at the time.

As discussed above, OPA finds none of the statements made by these Named Employees to violate policy; however, OPA recommends that they receive the below Training Referral.

- **Training Referral:** NE#1, NE#3, and NE#4 should receive retraining concerning the Department’s professionalism policy and should be reminded to avoid making improper statements during their exercise of law enforcement duties, including over the radio. To the extent this retraining and counseling has already been provided by the chain of command, no further action is needed. Any retraining and counseling that is



conducted should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #1 - Allegation #2**

***12.040 POL-3 - Using Department Devices 2. Employees Use Devices in a Professional Manner***

SPD Policy 12.040-POL-3(2) requires Department employees to use devices – including SPD issued radios – in a professional manner.

Regardless of the level of unprofessionalism at issue, it is clear that none of the Named Employees used their access to SPD radio channels appropriately here. SPD officers have access to this technology to assist in their performance of their duties, not to engage in improper conversations.

For these reasons, OPA recommends that all of the Named Employees receive the below Training Referral.

- **Training Referral:** The Named Employees should be reminded of the appropriate use of Department radio channels and should also be instructed to avoid engaging in unprofessional conversations while using that technology. To the extent this retraining and counseling has already been provided by the chain of command, no further action is needed. Any retraining and counseling that is conducted should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #1 - Allegation #3**

***5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation***

SPD Policy 5.002-POL-5 requires supervisors who become aware of a potential policy violation to investigate or refer the allegations depending on their severity. Minor allegations of misconduct may be investigated by a supervisor, while allegations of serious misconduct must be referred to OPA. (SPD Policy 5.002-POL-5.)

Here, NE#2 made a statement that violated the Department's professionalism policy. If NE#1 heard and understood the statement, SPD policy required NE#1 to take action, including either investigating and handling the issue or making an OPA referral. She did neither.

In explaining why not, she stated that she did not hear the comment that NE#2 made. OPA cannot disprove NE#1's statement, even while recognizing that NE#1 was indisputably listening to radio at the time (she responded just seconds later) and the statement was not garbled or otherwise unclear.

If OPA could establish that NE#1 did, in fact, hear the statement, OPA would find that her failure to take action regarding it violated policy. However, as discussed above, this question is ultimately inconclusive.

For these reasons, OPA recommends that this allegation be Not Sustained – Inconclusive



---

Recommended Finding: **Not Sustained (Inconclusive)**

**Named Employee #2 - Allegation #1**

***5.001 - Standards and Duties 10. Employees Shall Strive to be Professional***

Unlike with the other Named Employees, OPA finds that NE#2's statement rose to the level of a violation of the professionalism policy. It is simply improper and unacceptable to joke about a community member being hit by a bus. This is the case regardless of how that community member acted towards NE#2. Such statements, even if in jest, serve to diminish public trust and confidence and fall below the high standard of professionalism expected of NE#2 by the Department.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #2 - Allegation #2**

***12.040 POL-3 - Using Department Devices 2. Employees Use Devices in a Professional Manner***

OPA recommends that this allegation be Not Sustained and refers to the above Training Referral (see Named Employee #1 – Allegation #2).

Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #3 - Allegation #1**

***5.001 - Standards and Duties 10. Employees Shall Strive to be Professional***

OPA recommends that this allegation be Not Sustained and refers to the above Training Referral (see Named Employee #1 – Allegation #1).

Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #3 - Allegation #2**

***12.040 POL-3 - Using Department Devices 2. Employees Use Devices in a Professional Manner***

OPA recommends that this allegation be Not Sustained and refers to the above Training Referral (see Named Employee #1 – Allegation #2).

Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #4 - Allegation #1**

***5.001 - Standards and Duties 10. Employees Shall Strive to be Professional***

OPA recommends that this allegation be Not Sustained and refers to the above Training Referral (see Named Employee #1 – Allegation #1).



---

Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #4 - Allegation #2**

***12.040 POL-3 - Using Department Devices 2. Employees Use Devices in a Professional Manner***

OPA recommends that this allegation be Not Sustained and refers to the above Training Referral (see Named Employee #1 – Allegation #2).

Recommended Finding: **Not Sustained (Training Referral)**